

**HON'BLE SRI JUSTICE SANJAY KUMAR
AND
HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO**

WRIT PETITION No.17002 of 2016

ORDER: (per Hon'ble Sri Justice Sanjay Kumar)

Challenge in this Writ Petition is to the vacate notice dated 28.05.2016 issued by the Branch Manager of the respondent bank, Adilabad Branch.

Sri Mirza Nisar Ahmed Baig Nizami, learned counsel for the petitioner, placed before us a copy of the order dated 06.03.2016 passed by the District Magistrate, Adilabad, in exercise of powers under Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act), and informed us that it was pursuant to the aforesaid order that intimation to vacate was given under the impugned notice dated 28.05.2016. The actual possession of the secured asset was stated to have been taken by the respondent bank thereafter.

The learned counsel would assert that the possession notice as well as the proceedings under Section 14 of the SARFAESI Act, were initiated against the mother of the petitioner, Smt. Ashraf Begum, after her death on 11.08.2014. This aspect of the matter is not disputed by Sri A.Krishnam Raju, learned counsel appearing for the respondent bank.

As it is admitted before us that proceedings under Rule 8(1) of the Security Interest(Enforcement) Rules, 2002, and Section 13(4) and Section 14 of the SARFAESI Act were initiated against a dead person, we are of the opinion that the action taken by the respondent bank on the basis of such proceedings cannot be sustained in law. Trite to state, any proceeding initiated against a dead person would be void in its very inception.

On this short ground, possession taken pursuant to the

proceedings under Section 14 of the SARFAESI Act, stand invalidated and the respondent bank shall forthwith return the actual possession of the premises.

This order shall however not preclude the respondent bank from initiating action afresh against the persons concerned in accordance with law. The writ petitioner shall make available to the respondent bank the details of all the legal representatives of the deceased Smt.Ashraf Begum while taking re-delivery of possession.

The Writ Petition is accordingly disposed of. Consequently, pending miscellaneous petitions, if any, shall stand closed. No costs.

JUSTICE SANJAY KUMAR

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.23.06.2016

Note: C.C. by tomorrow.
b/o. vvr.